



financial payment. *Id.* at ¶¶ 3 - 6, Ex. A, Ex. B; *see also* Pl's Ex. F as attached to Doc. No. 23.

The settlement agreement also contained a provision making the existence of the payment and its amount confidential. Doc. No. 11 at Ex. B.

I specifically struck language at paragraph 17 of the proposed settlement agreement that would have enabled me to retain jurisdiction over the case for the purpose of enforcing the settlement agreement. *Id.* at ¶ 17. All parties accepted this amendment by placing their initials next to the language struck from the document. *See id.*; *see also* Ex. A as attached to Doc. No. 23 (additional copy). Ireland's counsel withdrew after the settlement agreement was approved. Doc. No. 16 (motion to withdraw); Doc. No. 17 (court approval of motion to withdraw).

Ireland<sup>1</sup> now files a "Motion to Dismiss Civil Action." Doc. No. 22. Although Ireland styled this action as a motion to dismiss, he argues that the substance of his claims is an action for relief from judgment under Fed. R. Civ. P. 60(b). As Ireland is filing *pro se*, I construe his motion as filed in the proper form. *Haines v. Kerner*, 404 U.S. 520, 520 - 21 (1972). He prays for this court to set aside the settlement agreement, for the plaintiffs to pay his legal fees from the underlying action, and for damages for alleged violation of the confidentiality agreement. Doc. No. 22. PMI and Reeve filed a motion to "Dismiss and/or Strike" Ireland's motion and request the award of attorney's fees. Doc. No. 23. They give no specific legal ground for their motion, so I will assume it is brought under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

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<sup>1</sup> Ireland brings his claims on his own behalf. He also attempts to file on behalf of his corporation, but a corporation must have its own lawyer. It cannot otherwise appear in court. *U.S. v. Cocivera*, 104 F.3d 566, 572 (3rd Cir. 1996); *see also Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 - 86 (11th Cir. 1985) ("The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel.") (citing *Commercial and Railroad Bank of Vicksburg v. Slocomb*, 39 U.S. (14 Pet.) 60 (1840)).

In his underlying motion for relief from judgment, Ireland makes four arguments:

1. He asserts that the settlement agreement should not be binding because he was “overmedicated” during the time it was being negotiated and approved. Doc. No. 22 at 2 - 3.
2. He asserts that the text of the agreement has been altered from what he negotiated. *Id.* at 3 - 4.
3. He asserts that PMI violated the confidentiality agreement by mentioning the amount paid in correspondence to him and by having parts of the settlement agreement read into the record in a new case before the courts in Colorado. *Id.* at 4 - 5.
4. He asserts that Reeve “wrongfully initiated” the lawsuit against him because only PMI’s Board of Directors could authorize a lawsuit on behalf of the company. *Id.* at 5 - 10.

For the reasons that follow, I will grant PMI and Reeve’s motion to dismiss in part, finding that three of Ireland’s four arguments are beyond my jurisdictional capacity to entertain or are time-barred, but that I will need to hold a hearing to determine whether the fourth claim merits the re-initiation of proceedings before this court. I defer judgment on PMI and Reeve’s request for the award of attorney’s fees in connection with this proceeding pending resolution of Ireland’s last claim.

## Standard of Review

The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *Holder v. City of Allentown*, 987 F.2d 188, 194 (3d Cir. 1993). In deciding a motion to dismiss, the court must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-moving party.” *Id.* The court will only grant a 12(b)(6) motion to dismiss if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). “The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997) (quotations omitted).

**Discussion**

I put aside Ireland’s first argument to address later, and turn to his last three claims, which I find either to be beyond my jurisdiction to entertain or time-barred.

### I. Ireland’s Jurisdictionally Barred and Time-Barred Claims

#### *Claim Number Two*

Ireland asserts in his second claim that the text of the settlement agreement was altered from what he negotiated on April 11, 2000 to what the court approved on May 23, 2000. Doc. No. 22 at 3 - 4; Doc. No. 25 at 3. Ireland, however, offers no specifics as to what alterations he alleges have been made, or how those changes may have harmed him. He further does not explain why he was unable to discover these changes after more than a year of living under its

terms. Ireland chose not to appeal the judgment previously entered by this court approving the settlement on its current terms.

Even more importantly, Ireland's objection to the formulation of the settlement is barred by the one-year limitations period. Under Fed. R. Civ. P. 60(b), inadvertence, neglect, or even fraud in drafting the terms of a settlement cannot call into doubt the validity of the judgment dismissing a case after more than one year has lapsed.<sup>2</sup> Fed. R. Civ. P. 60(b); *Sawka v. Healtheast, Inc.*, 989 F.2d 138, 140 (3d Cir. 1993). The settlement was approved on May 23, 2000; Ireland filed the instant motion on March 18, 2002. These dates are separated by almost 22 months. I therefore dismiss Ireland's objection on this point as untimely.

### *Claim Number Three*

Ireland third claim asserts that PMI violated the confidentiality agreement by mentioning the amount paid in correspondence to him and by having parts of the settlement agreement read into the record in a new case before the courts in Colorado. *Id.* at 4 - 5. It may well be that neither of the actions Ireland contests is an actual violation of the confidentiality agreement. The correspondence to Ireland was private, and the judge him or herself read the amount of the settlement agreement into the record in the parties' new case in Colorado. Exs. D and E to Doc. No. 22. These facts are apparent on the face of the documents that Ireland attaches as exhibits to his motion. *Id.*

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<sup>2</sup> Ireland cites Wright & Miller for the proposition that Rule 60(b) should not apply to his claim as an "independent action." Doc. No. 25 at 3; 11 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2866; Fed. R. Civ. P. 60(b). His motion is not an independent action, however, so the time limitations of Rule 60(b) continue to apply. *Averbach v. Rival Mfg. Co.*, 809 F.2d 1016, 1022 - 23 (3d Cir. 1987).

Most importantly, I do not have subject jurisdiction matter to hear this claim. I specifically struck the provision in paragraph 17 of the settlement which would otherwise have provided for continuing jurisdiction to enforce the terms of the agreement. Doc. No. 11 at ¶ 17. According to the Supreme Court in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994), without explicit provision for continuing jurisdiction, “enforcement of the settlement agreement is for state courts.” *Id.* at 382; *see also Phar-Mor, Inc. Securities Litigation*, 172 F.3d 270, 274 (3d Cir. 1999) (being even more specific that federal courts lack subject matter jurisdiction to enforce settlement agreements without the inclusion of a provision to the contrary). Ireland therefore remains free to bring his claim in state court. I dismiss Ireland’s claim here though for lack of federal jurisdiction.

#### *Claim Number Four*

Ireland’s fourth claim asserts that Reeve “wrongfully initiated” the lawsuit against him because only PMI’s Board of Directions could authorize a lawsuit on behalf of the company. *Id.* at 5 - 10. This claim would apply to PMI’s suit only, because Reeve would retain the capacity to sue in his own right regardless of the company’s procedure.

Ireland did not, however, raise this claim against PMI in the initial litigation that led to the settlement. Nor did Ireland raise this claim in a timely appeal of the judgment to which he agreed. He cannot now argue, more than two and a half years after the suit was instituted, and almost two years after he signed a settlement agreement relating to that suit, that one of the plaintiffs did not have the appropriate internal approval to bring the law suit. Moreover, I did not

retain jurisdiction to enforce the settlement agreement. I therefore dismiss Ireland's claim on this point as untimely.

## II Ireland's Mental Competence Claim

Part of Ireland's first claim may merit additional consideration. He asserts that the settlement agreement should not be binding because he was "overmedicated" during the time it was being negotiated and approved. Doc. No. 22 at 2 - 3.

In support of this contention, Ireland offers two main pieces of evidence. The first is a list of drugs he has taken, and their known side effects. The second is a letter from his doctor at the Air Force hospital opining that, for unknown reasons, he may not have been competent during the negotiation and approval of the settlement agreement.

Reviewing the list of drugs Ireland has taken, I note that only one of the drugs, Wellbutrin, has known side effects that may impact a patient's thought process. According to Ireland's exhibit, Wellbutrin can have the rare side effects of confusion, extreme distrust, and the retention of false beliefs that cannot be changed by facts. Ex. A to Doc. No. 22 at 6. But also reading the information Ireland provided, it is clear that he was not prescribed Wellbutrin for the first time until July 6, 2000, a month and a half after the final settlement was approved on May 23, 2000. *Id.* at 1. Any side effects he may have had from Wellbutrin showed up long after the settlement negotiations had been concluded.

The letter from the doctor, however, is more difficult to dismiss. The letter, dated June 28, 2000, states Doctor Vogt's conclusion that Ireland had exhibited poor thought processes and slow mental response during the previous nine months — a period of time that clearly covers the

settlement negotiations. Ex. C to Doc. No. 22. Dr. Vogt contends that the manifestations of these symptoms were not normal reactions to the medications Ireland was taking. *Id.* Ireland's mental problems during this time were, in the doctor's words, so severe as to "not be conducive to making sworn testimony, making statements of fact, or involvement in activities requiring mental processes." *Id.*

If Ireland were not mentally competent to participate in settlement negotiations and final approval, I would retain jurisdiction over the case. Under Fed. R. Civ. P. 60(b), district courts continue to exercise power to grant a party relief from a final judgment or order for any reason whenever justice so requires. Fed. R. Civ. P. 60(b); *Klapprott v. United States*, 335 U.S. 601, 615 (1949). The Rule is properly invoked where there are "extraordinary circumstances," *Ackermann v. United States*, 340 U.S. 193, 199 (1950), or where the judgment may work an extreme and undue hardship, *see, e.g., United States v. Cirami*, 563 F.2d 26, 32 (2d Cir. 1977), and "should be liberally construed when substantial justice will thus be served." *Radack v. Norwegian America Line Agency, Inc.*, 318 F.2d 538, 542 (2d Cir. 1963); *Stradley v. Cortez*, 518 F.2d 488, 492 n.5 (3d Cir. 1975) (citing *Radack*).

Moreover, the one-year limitation on such actions under Rule 60 is equitably tolled when necessary to prevent a grave miscarriage of justice. *U.S. v. Beggerly*, 524 U.S. 38, 46 (1998) (citation omitted). If Ireland was not mentally competent during the time the settlement agreement was being negotiated and approved, it may constitute a grave miscarriage of justice for the judgment to remain standing. *See, e.g., Quinn v. Hook*, 231 F. Supp. 718 (E.D. Pa.), *aff'd*, 341 F.2d 920 (3d Cir. 1964) (holding a previous judgment invalid because a party was not mentally competent during proceedings).

Accordingly, I will schedule a hearing to inquire into whether Ireland was mentally competent during the time the settlement was being negotiated and approved. Ireland will, of course, need medical testimony to support his contention. The period of time at issue will be narrowly drawn from when the lawsuit was filed on October 1, 1999 (or later if evidence is presented to the court to establish that settlement negotiations commenced at a later date) to when the settlement was approved by this court on May 23, 2000.

### **Conclusion**

For the reasons stated above, I find three of Ireland's four arguments for relief from the judgment to be unavailing, but will need to investigate the factual basis of whether Ireland was competent during the time the settlement was being negotiated and approved. I therefore grant plaintiffs' motion to dismiss Ireland's three other arguments for lack of jurisdiction or for being time barred. The motion to dismiss Ireland's competency issue is denied and a hearing will be scheduled to receive evidence on this issue. I reserve judgment on the plaintiffs' request for the award of attorney's fees pending resolution of Ireland's last claim. An appropriate order follows.

AND NOW, this day of July, 2002, after careful consideration of plaintiffs' motion to dismiss and/or to strike defendants' motion to dismiss civil action and for the award of attorney's fees and costs (Doc. No. 23), as well as defendants' reply thereto (Doc. No. 25), IT IS HEREBY ORDERED that plaintiffs' motion to dismiss is granted as to defendants' second, third, and fourth issues. Plaintiffs are ordered to file a response to the remaining issue of whether Ireland was mentally competent during the time the settlement was being negotiated and approved within 20 days. **An evidentiary hearing on the issue is scheduled for August 22, 2002 at 2PM in Courtroom 14B.** The period of time at issue will be narrowly drawn from when the lawsuit was filed on October 1, 1999 (or later if evidence is presented to the court to

establish that settlement negotiations commenced at a later date) to when the settlement was approved by this court on May 23, 2000.

BY THE COURT:

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William H. Yohn, Jr., Judge